

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
MILLER AND LIEB WATER COMPANY, INC.)
and HAWAIIAN BEACHES WATER COMPANY,)
INC.)
)
For Approval of the Sale and)
Transfer of Assets of Miller and)
Lieb Water Company, Inc. and)
Related Matters.)
_____)

DOCKET NO. 2006-0437

ORDER NO. 23074

Filed November 24, 2006
At 2 o'clock P.M.

Brooke K. Kane
for Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

for Brooke K. Kane

In the Matter of the Application of)
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Order No. 23074

By this Order, the commission instructs MILLER AND LIEB WATER COMPANY, INC. ("Miller and Lieb"), HAWAIIAN BEACHES WATER COMPANY, INC. ("HBWC"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), to submit a procedural schedule for the commission's review and consideration.¹ Alternatively, in the absence of a formal procedural schedule, the Parties shall, at a minimum, identify their agreed-upon deadlines for the Consumer Advocate and Applicants to file their position and rebuttal statements, respectively, and notify the commission accordingly.

1 Miller and Lieb and HBWC are collectively referred to as
2 the "Applicants." The Consumer Advocate is an ex officio party
3 to this proceeding, pursuant to Hawaii Revised Statutes ("HRS")
4 § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).
5 Applicants and the Consumer Advocate are collectively referred to
6 as the "Parties."

I.

Background

Miller and Lieb is authorized by the commission to operate as a public utility providing water service within the Hawaiian Beaches Subdivision located in Pahoa, Puna District, island of Hawaii.² HBWC is a Hawaii corporation recently formed

²On July 15, 1975, Miller and Lieb was incorporated under the laws of Hawaii for the purpose of conducting operations and business as a water distribution company within the Hawaiian Beaches Subdivision. See Joint Application, at 3 - 4; and In re Miller & Lieb Water Co., Inc., Docket No. 2748, Decision and Order No. 4098, filed on December 26, 1975, at 1.

On December 26, 1975, the commission, in Docket No. 2748: (1) held that the operations of Miller and Lieb constituted a public utility by definition; and (2) authorized Miller and Lieb to publish, establish, and assess an interim rate of \$6.00 per month, effective from October 24, 1975. Docket No. 2748 was initiated by an application filed by Miller and Lieb on October 14, 1975, requesting the commission's "authorization and approval of rates and charges applicable to its water distribution service within the Hawaiian Beaches Subdivision located in the Puna District, Pahoa, Hawaii. Authorization and approval [was] sought under Sections 269-1 and 269-16, [HRS]." Decision and Order No. 4098, at 1. As noted by the commission in Decision and Order No. 4098:

Pursuant to Section 269-1, [HRS], the distribution and sale of water to the general public falls within the definition of a public utility. Accordingly, [Miller and Lieb] is required to comply with Section 269-16, [HRS], concerning the filing and publication of rates, charges, rules, and practices made for its sale of water distribution services.

Docket No. 2748, Decision and Order No. 4098, at 2. See also Docket No. 2748, Decision and Order No. 4103, filed on January 16, 1976 (authorizing Miller and Lieb to place into effect on or after December 15, 1975, its proposed tariff rules as amended by the commission); and Decision and Order No. 4221, filed on April 20, 1976 (authorizing a rate of \$8.75 per month and approving Miller and Lieb's tariff rules).

As explained by Applicants, Miller and Lieb does not hold a certificate of public convenience and necessity ("CPCN"). See Joint Application, at 4 n.5. Rather, in October 1975, the commission, in effect, authorized Miller and Lieb to provide

for the purpose of acquiring Miller and Lieb's utility assets and taking over the operations and business of providing water service to the Hawaiian Beaches Subdivision.

By Joint Application filed on November 3, 2006, Applicants request the commission's approval of an Asset Purchase Agreement, dated October 1, 2006 (the "Agreement"), and of other related matters that will ultimately result in the sale and transfer of Miller and Lieb's utility assets, operations, and operating authority to HBWC.³ Applicants make their requests

water utility service to the Hawaiian Beaches Subdivision. See Docket No. 2748, commission's letter, dated November 4, 1975 (at the October 24, 1975 quorum meeting, the commission granted interim approval to allow Miller and Lieb to provide basic water distribution services at an interim rate of \$6.00 per month, effective from October 24, 1975, with a formal decision and order forthcoming); and Decision and Order No. 4098, filed on December 26, 1975.

The requirement for a person holding itself out to the general public as a public utility to obtain a CPCN from the commission, as codified in HRS § 269-7.5, took effect on May 16, 1978. See Act 72, Haw. Sess. Laws 1978, § 1. HRS § 269-7-5, subsection (c), provides:

No public utility which holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or which has a bona fide operation as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under [section 269-16].

(Emphasis added.)

Thus, under the grandfather exception codified in HRS § 269-16(c), Miller and Lieb is authorized by the commission to operate as a public utility providing water service within the Hawaiian Beaches Subdivision.

³Joint Application; Exhibits A - B; Verification; and Certificate of Service, filed on November 3, 2006, as supplemented on November 9, 2006 (collectively, "Joint Application"). Applicants served copies of their Joint Application upon the Consumer Advocate.

pursuant to HRS § 269-19 and HAR chapter 6-61, subchapters 6 and 10.

On November 8, 2006, in In re Miller and Lieb Water Co., Inc., Docket No. 2006-0442, Miller and Lieb filed an application for approval of: (1) a general rate increase, utilizing the 2007 calendar test year; and (2) certain financing arrangements.⁴ Miller and Lieb's application for a general rate increase is subject to the expedited ratemaking procedures set forth in HRS § 269-16(f). In brief, the commission must make every effort to issue its proposed decision and order within six months from the filing date of Miller and Lieb's complete Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3).

Upon review, the Joint Application filed in this docket and Miller and Lieb's application for a general rate increase filed in Docket No. 2006-0442 appear inter-related, with Applicants envisioning commission action on the merits in this docket first, followed by expedited commission action on Miller and Lieb's request for a general rate increase in Docket No. 2006-0442. For example, under its anticipated new ownership (if approved by the commission in this docket), the water utility proposes to borrow and expend capital funds to expand its capacity to meet the "recent increase in development

⁴Application; Exhibits MLW 1 - MLW 10; MLW T-100 and MLW T-200; Verification; and Certificate of Service, filed on November 8, 2006 (collectively, "Application").

of residences within the service area and the current backlog of approximately 145 applications for service[,]”⁵ and seeks recovery of these capital costs as part of its application for a general rate case in Docket No. 2006-0442.⁶

Under the circumstances, the commission finds it prudent and feasible to instruct the Parties to submit a stipulated procedural schedule for the commission's review and consideration.⁷

II.

Orders

THE COMMISSION ORDERS:

1. Within thirty days from the date of this Order, the Parties shall submit to the commission a stipulated procedural schedule, incorporating their agreed-upon schedule with respect to this proceeding.

2. If the Parties are unable to stipulate to such a schedule, each party shall submit a proposed procedural schedule for the commission's consideration by the same date. Alternatively, in the absence of a formal procedural schedule, the Parties shall, at a minimum, identify their agreed-upon

⁵Application, at 5.


⁶In this regard, Miller and Lieb notes that upon favorable commission action in Docket No. 2006-0437, HBWC “will be substituted as the applicant in [Docket No. 2006-0442] and will assume Miller and Lieb's obligation to provide water to the Miller and Lieb service territory and comply with the applicable Rules and Regulations.” Application, at 1 n.1.

⁷In the event intervenor or participant status is later granted to any interested person, the commission will amend the procedural schedule accordingly, if necessary.

deadlines for the Consumer Advocate and Applicants to file their position and rebuttal statements, respectively, and notify the commission accordingly.


DONE at Honolulu, Hawaii NOV 24 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0437.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23074 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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BEACHES WATER COMPANY, INC.



for Karen Higashi

DATED: NOV 24 2006